INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute and Regulations involved	2
Statement	3
Argument	31
Conclusion	38
Appendix	39

CITATIONS

Cases:	
Comstock v. *Group of Investors*, 335 U. S. 211	35
Friedberg v. *United States*, 348 U. S. 142	32
Goldberg v. *Commissioner*, decided December 19, 1956	37
Helvering v. *Mitchell*, 303 U. S. 391	32
Holland v. *United States*, 348 U. S. 121	2, 32, 37
Kashat v. *Commissioner*, 229 F. 2d 282	37
Lias v. *United States*, 51 F. 2d 215, affirmed, 284 U. S. 584	3
Smith v. *United States*, 348 U. S. 147	32
Spies v. *United States*, 317 U. S. 492	37
United States v. *Calderon*, 348 U. S. 160	32
United States v. *Ford*, 237 F. 2d 57, certiorari granted February 25, 1957, No. 794, this Term	34
United States v. *Johnson*, 319 U. S. 503	32
Statute:	
Internal Revenue Code of 1939:	
Sec. 22(a) (26 U. S. C. 1952 ed., Sec. 22(a))	39
Sec. 41 (26 U. S. C. 1952 ed., Sec. 41)	39
Sec. 51(b) (26 U. S. C. 1952 ed., Sec. 51(b))	39
Sec. 54(a) (26 U. S. C. 1952 ed., Sec. 54(a))	40
Sec. 54(b) (26 U. S. C. 1952 ed., Sec. 54(b))	40
Sec. 275(a) (26 U. S. C. 1952 ed., Sec. 275(a))	40
Sec. 276(a) (26 U. S. C. 1952 ed., Sec. 276(a))	41
Sec. 293(b) (26 U.S.C. 1952 ed., Sec. 293(b))	41
Miscellaneous:	
Treasury Regulations 111, Sec. 29.54-1	41

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 754

WILLIAM G. LIAS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

WILLIAM G. LIAS and ALICE B. LIAS, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 1101a-1169a)[1] are reported at 24 T. C. 280. The opinion of the Court of Appeals (Pet. 32-39) is reported at 235 F. 2d 879.

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[1] Unless otherwise indicated, all references are either to the appendix to the petitioners' brief filed in the Court of Appeals (designated "R."), or references to the appendix to the Commissioner's brief below (designated "Supp. R.").

JURISDICTION

The judgments of the Court of Appeals were entered on August 3, 1956. (Pet. 2.) An order denying a petition for rehearing was entered on September 11, 1956. (Pet. 2.) On November 14, 1956, this Court entered an order extending the time for filing a petition for a writ of certiorari to and including February 8, 1957. (Pet. 2.) The petition for a writ of certiorari was filed on February 7, 1957. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTIONS PRESENTED

1. Whether, in approving the use of the net worth method to determine the taxpayer's true income, the tests enunciated by this Court in *Holland* v. *United States,* 348 U.S. 121, and related cases, were correctly applied by both courts below, upon the basis of their conclusions that during the taxable period the taxpayer kept no adequate records, had many likely sources of income (mostly gambling enterprises), acquired a substantial amount of assets held in his own name and in the names of others, and had been properly credited with assets on hand at the beginning point, including cash.

2. Whether the courts below correctly concluded that the returns in question for the taxable period had been filed with intent to evade, so as to warrant imposition of the 50 per cent fraud penalty.

STATUTE AND REGULATIONS INVOLVED

Sections 22, 41, 51, 54, 275, 276 and 293 of the Internal Revenue Code of 1939, and Section 29.54-1 of Treasury Regulations 111 are printed in the Appendix, *infra,* pp. 38-40.

STATEMENT

The testimony in these cases is contained in 7,150 pages of typewritten transcript, and more than 400 exhibits were introduced. (R. 1168-1169a.) The Tax Court made lengthy findings of fact. (R. 1104a-1146a.) The Court of Appeals, seeing no need (Pet. 32) "to repeat at considerable length what was said by the Tax Court," simply superimposed its discussion of the cases "upon the Tax Court's findings." The following is a summary of the more important findings of fact, and of the evidence germane to the issues here involved.[2]

History of the taxpayer prior to the taxable period. Beginning at an early date, and continuing until about 1930, the taxpayer was engaged in bootlegging. In connection with this activity, he was convicted, sentenced, and fined in four cases in the United States District Court for the Northern District of West Virginia for violation of the National Prohibition Act. On January 9, 1923, he received a six months' sentence and was fined $1,000; on January 24, 1924, he was fined $750; on May 12, 1926, he received a sixteen months' sentence and a fine of $5,500; and on November 12, 1930, he received a two-year sentence and was fined $10,000. On appeal from the last conviction, the United States Court of Appeals for the Fourth Circuit affirmed (*Lias* v. *United States,* 51 F. 2d 215, affirmed, 284 U. S. 584).

[2] William G. Lias will hereafter be referred to as the taxpayer. Although he and his wife, Alice B. Lias, filed a joint return for the year 1948, she will hereafter be referred to as the taxpayer's wife. The so-called Lias Group consists of the following individuals: the taxpayer; John Lias, his brother; the taxpayer's wife; Mary Koutroumanos, mother of the taxpayer's wife; Gregory Koutroumanos and William Koutroumanos, brothers of the taxpayer's wife; and the taxpayer's two children, George B. Lias and Antoinette Lias. (The surname Koutroumanos will hereafter be referred to, as in the Tax Court, as Manos.) (R. 1140a.)

During the taxpayer's bootlegging activities the governmental authorities seized and confiscated considerable quantities of illicit liquor and transportation equipment. (R. 1109a.)

On December 12, 1930, the taxpayer began a numbers business in Wheeling, West Virginia, and in nearby Ohio and Pennsylvania towns, in partnership with one George Seibert and one Mike Russell. In 1931 the taxpayer's only source of income was from the numbers business. On December 16, 1931, Seibert, Russell, and the taxpayer had an accounting of their numbers partnership. At that time the profit in that business was approximately $27,000. The partners agreed to draw $900 each from the partnership. The taxpayer and Seibert each withdrew his share and Russell loaned his share to the taxpayer, who was leaving to commence a prison sentence. (R. 1109a-1110a.)

From December 17, 1931, to April 18, 1932, the taxpayer was confined in the Federal Reformatory Camp in Petersburg, Virginia, when, in connection with the conviction on November 12, 1930, he was transferred to the Federal penitentiary in Atlanta, Georgia, until his release on July 23, 1933. His interest in the numbers partnership continued during his confinement in the penitentiary. (R. 1110a.)

When, in 1931, the taxpayer learned that he would be required to serve the sentence imposed on November 12, 1930, he persuaded his brother, John, to come to Wheeling to look after his interest in the numbers partnership. John did not receive any compensation until January 1, 1933, when he was paid $50 per week. (R. 1110a.)

In 1934, the partnership between Seibert, Russell,

and the taxpayer was terminated. Thereupon, the taxpayer and his brother, John Lias, formed a partnership under the name of Wheeling Book Company, which partnership continued until late 1937, when the numbers business was outlawed. (R. 1110a-1111a.)

Prior to the year 1933 the taxpayer filed no federal income tax returns. Sometime in 1932 he learned that income derived from illegal enterprise was subject to tax. In 1933, an investigation of the taxpayer's income tax liability for the years 1929, 1930 and 1931 was begun. The taxpayer was interviewed on October 31, 1933, by special agents, at which time he stated that he had been advised not to discuss his business with them unless he was granted immunity from prosecution and that they would never learn the true facts unless he explained them. He also stated that if the special agents were interested only in determining the amount of his tax he would cooperate and pay whatever tax was determined. In the course of their investigation, the agents had learned of fictitious accounts which pertained to the numbers business. The taxpayer denied any connection with the fictitious accounts or the numbers business. On July 30, 1934, a preliminary 30-day letter was sent to the taxpayer, asserting deficiencies and penalties for 1928 through 1931, totaling $45,675.15. The taxpayer's income for the years 1928, 1929, and 1931 had been determined on a basis of an analysis of three bank accounts in his name, and of certain fictitious accounts. On April 26, 1935, jeopardy assessments were made for the 1928, 1929, and 1931 deficiencies. On May 10, 1935, a notice of deficiency was sent to the taxpayer who, on July 19, 1935, filed a petition with the Tax Court of the United States (formerly the United States Board of Tax Appeals),

putting the aforementioned deficiencies in issue. (R. 1111a-11113a.)

On April 10, 1935, the taxpayer was indicted for willfully attempting to defeat and evade income taxes for 1931 in the sum of $122,000. He was tried on that indictment and was acquitted on July 27, 1935. (R. 1113a.)[3]

Just prior to the criminal trial, in 1935, the taxpayer admitted his connection with the numbers business and claimed for the first time that he had only a one-third interest in the business. George Seibert, one of the alleged partners, objected to his name and share appearing on the 1934 partnership return and had not admitted to the revenue agents his interest in the numbers business. (R. 1114a.)

On November 30, 1937, an offer in compromise of the taxpayer's civil and criminal liabilities was filed. By power of attorney dated January 10, 1938, the taxpayer empowered David S. Goldberg to appear before the Bureau of Internal Revenue and the Tax Court with respect to his tax matters for the years 1917 to 1938. Under date of March 24, 1938, Goldberg sent a letter enclosing an installment offer in compromise dated March 22, 1938. On each of the dates March 22, May 4, and May 17, 1938, the taxpayer paid $1,000 upon

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[3] On April 26, 1948, the taxpayer was indicted for willfully attempting to defeat and evade his taxes for the years 1942 to 1946, inclusive, the years under consideration in this case. On November 9, 1948, he pleaded guilty to the fifth count of the indictment, involving the year 1946, and the first four counts were dismissed by the United States District Court for the Northern District of West Virginia. He was sentenced to five years, and fined $10,000. On January 21, 1949, he moved to withdraw his guilty plea, which motion was granted, and the sentence and fine were vacated. On May 10, 1949, the taxpayer was reindicted, pleaded not guilty, and, after jury trial, was acquitted on July 2, 1949. (R. 1141a.)

the compromise offer. The taxpayer subsequently defaulted in the balance of payments under his offer. (R. 1114a-1115a, 1116a.)

Pursuant to a stipulation filed May 4, 1938, the Tax Court entered a decision for deficiencies and penalties, as follows (R. 1115a):

Year	Deficiency	50 per cent penalty	25 per cent penalty	Total
1928	$ 838.88	$419.44	$209.72	$1,468.04
1929	74.68	37.34	18.67	130.69
1931	1,659.38	829.69	414.85	2,903.92

The taxpayer's returns for the years 1934 and 1935 were investigated, and a notice of deficiency was issued April 12, 1938. A petition was filed with the Tax Court. On April 1, 1941, Goldberg sent a letter to the Collector of Internal Revenue enclosing an offer in compromise on behalf of the taxpayer, dated March 31, 1941. No remittance or financial statement accompanied the offer and it was returned by the Collector. The offer provided for payment of $2,500 in compromise of the unpaid deficiences for 1934 and 1935 and for the 1937 tax returned. On May 16, 1941, the taxpayer wrote to the Collector of Internal Revenue, enclosing a check for $50 to apply on his income taxes for past years. (R. 1117a-1118a.)

Between May 20, 1935, and January 1, 1945, thirteen warrants were issued for the taxpayer's delinquent taxes. Ten warrants were issued prior to May 27, 1941. One warrant issued January 21, 1942, was paid April 1, 1942, and two issued on January 1, 1945, for additional taxes were paid promptly. In November 1942, after having met some payments and having defaulted on others, the taxpayer gave a check for approximately $5,500 in full settlement of the balance due. (R. 1118a-1119a.)

Examinations of the taxpayer's income tax returns for 1940 and 1941 were made, and a deficiency notice was sent under date of October 5, 1943. A petition contesting the deficiences was filed with the Tax Court on November 19, 1943. Pursuant to stipulation, a decision was entered on October 28, 1944, for deficiencies of $577.58 and $5,063.78, respectively. (R. 1119a.)

Returns filed and income reported for the taxable years. The taxpayer filed individual returns for the years 1942 to 1947, inclusive, and he and his wife filed a joint return for 1948, reporting the following amounts of net income (R. 1140a):

Year	Income Reported
1942	$ 98,283.74
1943	81,023.26
1944	86,109.59
1945	76,336.18
1946	135,429.68
1947	127,773.13
1948	(17,928.71) (joint return)

Income determined by Commissioner for taxable period; deficiencies and penalties asserted. On the basis of an analysis of increases in net worth, the taxpayer's corrected net income was determined to be as follows (R. 1142a-1144½a):

1942	$140,895.66
1943	266,635.15
1944	420,379.20
1945	662,992.79
1946	185,470.47
1947	323,985.61
1948	40,880.60

The resulting deficiencies and fraud penalties are as follows (R. 1102a):

Year	Deficiency	50% Penalty
1942	$ 33,325.45	$ 16,662.73
1943	161,770.79	80,885.39
1944	303,360.57	151,680.29
1945	554,837.86	277,418.93
1946	49,020.92	24,510.46
1947	166,562.75	83,718.88
1948	17,662.02	8,831.01

The inadequacy of records as warrant for use of the net worth method. Numerous personal accounts of the taxpayer and of his wife were kept in the records of two corporations, Automatic Cigarette Sales Company (the owner and operator of slot machines, coin vending and music machines), and Zeller's Steak House, Inc. (a restaurant which carried on some gambling activities).[4] However, the Tax Court found that the taxpayer kept no permanent personal books of accounts or records from which the agents could determine his income. (R. 545a-546a, 1106a, 1120a.)

The returns for 1942 to 1948, inclusive, were prepared by David S. Goldberg, a certified public accountant, from information taken from books of the corporations and partnerships in which the taxpayer had an interest, from receipts, cancelled checks, check stubs, purchase and sales slips, and statements of stockholders, from records of interest on bank accounts, from information furnished by brokers, sellers and purchasers as to realty transactions, and by the taxpayer's wife as to rents, and from information which the taxpayer supplied orally, usually near the close of the year. (R. 32a, 1120a.)

The books of the partnerships and corporations in which the taxpayer had an interest were kept by bookkeepers employed by the organizations, and not by the taxpayer's accountant. The taxpayer had employed

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[4] As noted hereafter, the taxpayer's sources of income during the taxable years comprised, in the main, many partnerships and corporations, some of which carried on substantial illegal gambling activities.

Mr. Goldberg, in 1936, in connection with the various enterprises, but the accountant did not make any of the original records concurrently with the transactions they reflected. Goldberg's records were prepared from primary records made by employees of the various organizations. He made up weekly or monthly statements and work papers on the basis of the information given him and such limited verification as he could make, and from these he prepared the tax returns for the enterprises and for the individual members of the Lias Group. (R. 1119a-1120a.)

Goldberg was not engaged in any of the activities of the various enterprises, legal or illegal (he was a stockholder in Greiner's, Inc., and this was the only investment he had in any of the taxpayer's enterprises), and he could not be certain whether the information supplied to him was complete or accurate. In this connection, he testified that during the taxable period involved, he was employed full time, eight hours a day and six days a week, as comptroller for a department store, and also performed accounting services for many clients in addition to the taxpayer. He stated that "not very much" time was devoted by him to the taxpayer's affairs. (R. 13a, 1120a; Supp. R. 18.)

None of the other witnesses called by the taxpayer could testify from personal knowledge of the facts that all of the income of any of the gambling enterprises was recorded and reported. For example, there was testi-

mony that many of the tickets of Reuthers, Inc., showing gambling wins or losses, had been destroyed or were not in existence and could not be checked, and the books of that corporation had never been audited. Similarly, the evidence as to the books of the Automatic Cigarette Sales Company showed that they were kept by a Miss McGill, who took orders from the taxpayer. Many entries were made in those books on the taxpayer's oral instructions only. Miss McGill did not make the entries on the collection sheets but these were made by slot machine collectors, who did not testify at the hearing below. She simply posted the entries from those sheets. The books of the Automatic Cigarette Sales Company did not show the numbers or locations of the slot machines, which were never inventoried. Collection sheets were only partially available for 1942 and were not available for 1943 and 1944. The missing collection sheets could not be found, and there was no way of checking with the location proprietors who took the figures which the corporation gave them. In 1942, 1943 and 1944, the taxpayer drew from the corporation the respective amounts of $35,000, $60,000 and $50,000, without having any record made. The amounts were later recorded as year end adjustments, based on the taxpayer's oral statements.[5] The agents

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[5] The taxpayer's appropriation of the $50,000 item, and its ultimate reflection in the records of Automatic Cigarette Sales Company, was explained by Goldberg as follows (R. 147a-148a):

Q. Did you find something in the books of Automatic that caused you to make inquiry with reference to that?

were unable to audit the records of the Automatic Cigarette Sales Company, and its income could not be adequately determined from the records alone. (R. 147a-148a, 150a, 438a, 440a, 460a, 469a, 477a, 856a, 859a, 863a-864a, 1165a; Supp. R. 69-70, 120, 721, 737.)

The various gambling partnerships were owned by an alleged partnership known as Lias Brothers, an outgrowth of a former gambling partnership known as Wheeling Book Company. The only records available

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A. No, sir; that was information voluntarily given me by Mr. Lias.

Q. That occurred during the month of November?

A. Well, the entry was made in the month of November, so I would say the information came to me in the month of November, 1944. I am not specific as to the date. I received the information on a Sunday.

Q. You were engaged in the auditing of the books at that time or were examining the books at that time?

A. No, sir; I was waiting for a bus and Mr. Lias came along and picked me up in his car. While he rode me out to my home, he told me about the fact that he sold some machines for $50,000 and he wanted to keep the money, was going to keep the money. At that time I told him I would put the entry on the books. He said "O.K."

Q. Did he tell you whose machines he had sold?

A. The machines of the Automatic.

Q. Did he tell you how many he had sold?

A. No, sir.

Q. Did he tell you to whom he had sold them?

A. No, sir.

Q. Did you make a check of the records of Automatic to determine what machines were sold?

A. No, sir.

Q. I believe you testified you had nothing to do with these records, is that correct?

A. Outside of making journal adjustments at the end of each month, I had nothing to do with the records, as such.

Q. And you never made an audit of these records, Automatic's records?

A. Not as such, no sir.

for Lias Brothers were tax returns and such records of the individual underlying partnerships as were extant. There were no formal partners' accounts on the gambling partnership books, such as they were, and distributive shares to Lias Brothers could not be determined. The individuals who kept such records as there were for the Acorn Club, Silver Dollar, Club Paddock, and the Point Pleasant Amusement Company (other partnerships in which petitioner was interested, see p. 21, *infra*) did not testify. The accountant for the Acorn Club admitted that the books of that gambling enterprise were kept by others, and he could not vouch for their correctness. The books of the Market Street Club were at best single entry records consisting of a daily journal showing wins and losses which were summarized, recapped and entered on weekly or monthly statements. Goldberg admitted he could make no audit of the game slips of the Market Street Club, and that all that he could do was to make an arithmetical calculation as to the difference between the ins and outs and the total for the wins or losses for the day, and then check that against the bank account. (R. 18a, 22a-24a, 102a; Supp. R. 4, 7-9, 32-33, 37, 146.)

Evidence that the taxpayer's net worth increases were attributable to currently taxable income.

(a) *Taxpayer's interests.* The Tax Court concluded that during the taxable years, as well as for some years prior thereto, the taxpayer "maintained varying interests in partnerships and corporations, most all of which derived their income from gambling activities embracing many forms." The Tax Court found that the taxpayer had received income from these partnerships and corporations during the taxable period. In addition, the taxpayer admitted that he also derived

income from individual gambling. In his 1943 return, he had claimed a gambling loss deduction exceeding $20,000. When questioned as to an item of $35,000 appearing as slot machine receipts on his 1942 return, he described one of its possible sources as gambling winnings. He also testified that he had won money on election bets. (R. 1105a-1106a, 1121a, 1147a; Supp. R. 890.)

The partnerships from which the taxpayer derived income were as follows:

Lias Brothers was a partnership in which the taxpayer and his brother, John Lias, were partners. Lias Brothers had interests in other partnerships, which were operated throughout the following designated periods under the following names: Acorn Club, a gambling and horse book establishment in Bridgeport, Ohio (1942-1948); Point Pleasant Amusement Company, a slot machines enterprise in Point Pleasant, West Virginia (1942); Club Paddock, a night club, restaurant, bar, and gambling casino (1937-1944); Market Street Club, horse book and gambling casino, Wheeling, West Virginia (1942-1948), the gambling activities of which included three crap tables, a chuck-a-luck, or hazard game, a roulette wheel, and a black jack game; and Pirate Cafe, a restaurant, bar, and gambling establishment in South Wheeling, West Virginia (1942-1948). (R. 1105a-1106a.)

The corporations from which the taxpayer derived income were as follows: Automatic Cigarette Sales Company, owner and operator of slot machines, coin vending and music machines (1942 to 1945); Zeller's Steak House, Inc., operating a restau-

rant[6]; Reuther's, Inc., conducting a horse book operation, and a restaurant (1945 to 1948); Greiner's, Inc., a retail store handling radios, records, and electrical appliances (1944 to 1948); Laconia, Inc., a real estate holding company (1944 to 1948); Wheeling Downs, Inc., owner of the grounds, buildings, and equipment of the racetrack known as Wheeling Downs (1945-1948); and Wheeling Downs Racing Association, the operator of the racetrack under lease from Wheeling Downs, Inc., (1946-1948). (R. 1106a-1109a.)

(b) *Elimination of nontaxable sources.* The Tax Court found that during the taxable years the taxpayer had not received any money or property either by gift or inheritance. (R. 1142a.)

The establishment of a definite opening net worth.

(a) *The Government's investigation of leads.* The Tax Court found that the revenue agents had made an extensive investigation from all available sources for the purpose of constructing a net worth statement. The Court of Appeals concluded that the revenue agents had conducted "an exhaustive and meticulous search," that the net worth computation had been "established with meticulous detail," and that in the course of the investigation the agents had been "unable

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[6] Zeller's Steak House, Inc., also carried on some gambling activity. Organized in July, 1941, it was active until April, 1949, when its property was destroyed by fire. (The evidence showed that on April 8 or 9, 1949, there had been a fire on the premises of Zeller's Steak House, Inc.) On September 27, 28 and 29, 1951, mutilated monies in the respective amounts of $45,000, $35,000, and $29,000 were delivered by an employee of the Wheeling Downs Racing Association to a bank for deposit or exchange. In November, 1951, $15,000 in mutilated or burned money was turned over to the taxpayer by an employee of the Market Street Club and was sent to the United States Treasury for redemption. (R. 19a, 545a-546a, 1145a.)

to find property in any considerable amounts belonging to members of the family," other than the taxpayer. (R. 1121a; Pet. 34, 35, 37.)

(t *The establishment of cash on hand at the beginnin int.* As of December 31, 1941, the taxpayer was credited with the sum of $2,847.53, representing cash in banks. He claimed that at the beginning of the net worth period, he alone, without reference to other members of the Lias Group, had between $850,000 and $950,000 cash reserves on hand. He had testified that in June, 1926, he had $219,000 in concealed currency, and that by June, 1936, it had increased to $620,000. The Tax Court, however, concluded that "the record discloses a great deal of credible evidence which negates the existence of any secreted currency as of January 1, 1942." Similarly, the Court of Appeals concluded that the taxpayer had "offered no evidence whatsoever to support a claim of any such amounts of savings or cash," that "the revenue agents, despite an exhaustive and meticulous search, were unable to uncover any evidence of substantial savings or cash," and that the taxpayer had "conclusively established to the Commissioner of Internal Revenue, when his returns for the years up to 1941 were under consideration, that he had no funds whatsoever." The Court of Appeals agreed with the Tax Court that the taxpayer had "utterly failed to establish error in the Commissioner's opening net worth statement." (R. 1143a, 1151a, 1152a; Pet. 37.)

Among the facts which the Tax Court found in support of the conclusion that the taxpayer had no funds or property beyond the amounts allowed at the beginning of the period on January 1, 1942, were the following:

In an interview with a special agent in August, 1933, the taxpayer stated that he never filed tax returns because he was always "broke"; that he had made money in the past, but had spent it as fast as he made it; that the overhead in the liquor racket in which he had been engaged, including attorney fees, was heavy. In September, 1933, it was necessary for the taxpayer to borrow $2,000 from his sister in order to make a trip to California. In October, 1933, the taxpayer told two special agents that he had no business and no source of income. At a conference in 1934 to discuss proposed deficiences for the years 1928 to 1931, inclusive, it was represented that the taxpayer was "broke", and his representatives cited the borrowing of $2,000 from his sister as proof of such fact. In 1934, a mortgage of $6,000 was foreclosed on the taxpayer's home, and the property was purchased by his brother, John. In January, 1935, the United States District Court of the Northern District of West Virginia issued a writ under which the United States Marshal seized property of the taxpayer for collection of unpaid fines, in the sum of $3,808.70, imposed for violation of the National Prohibition Act. The balance of these fines was not paid until December, 1946. (R. 1111a-1113a.)

In April, 1935, the taxpayer was indicted for willfully attempting to evade and defeat taxes owing for 1931, in the sum of $122,000. He was acquitted. In November, 1937, through his accountant, David S. Goldberg, the taxpayer submitted an offer in compromise of his civil and criminal liabilities and forwarded a check for $1,000 to the Department of Justice in connection with the offer, expressing an intention to send further payments until the full tax liability was discharged. He expressed regret that he could not send more, but that it was impossible to do so because of

general business conditions. He stated that his entire working capital would be depleted if he attempted to pay the entire amount. The Department of Justice suggested the submission of an installment offer of $10,400. Such an offer was submitted on March 24, 1938, and in it the taxpayer stated that the sum of $10,400 represented his true tax liability for years prior to January 1, 1934. In explanation of the taxpayer's failure to meet his original offer, it was stated that the taxpayer had been unable to obtain the money from two specific sources (from George Seibert, and from a deposit in a Pennsylvania bank). Aside from these two sources, the taxpayer's representative advised that the taxpayer had no cash to pay, was obligating himself to the fullest extent, and that the cash that the taxpayer did have at that time represented his only working capital, and was extremely necessary for the operation of his business. On each of the dates March 22, May 4, and May 17, 1938, the taxpayer paid $1,000 upon the compromise offer. On May 4, 1938, the Tax Court, on stipulation, entered a decision for deficiences and penalties, as follows: 1928, $1,468.04; 1929, $130.69; 1931, $2,903.92. On June 6, 1938, Goldberg, the taxpayer's representative, wrote to the Department of Justice that the taxpayer was unable to meet a $500 payment due on June 1. On August 4, 1938, Goldberg again wrote the Department that the taxpayer was unable to make his monthly installment payments, that he (Goldberg) had done everything that he could to effect a settlement of the taxpayer's liabilities, and that it might be better to contact the taxpayer directly. A deputy collector contacted the taxpayer in August, 1938. He was advised that the taxpayer could not pay his taxes, but would make every effort to do so within sixty days. Several months thereafter, the taxpayer

advised the deputy collector that he had no money, that he could not obtain any, and that he was not making any in his business at that time. (R. 1113a-1116a.)

The taxpayer made numerous defaults on his offer in compromise. In November, 1939, a special agent interviewed him for the purpose of determining his ability to pay. At that interview the taxpayer stated that he was unable to pay the amount of the offer because practically everything he had was tied up in Automatic Cigarette Sales Company, and he was putting all money back into the business as it came in. On November 16, 1939, in order to settle his tax liabilities, the taxpayer delivered to the Collector of Internal Revenue thirteen postdated checks of Automatic Cigarette Sales Company, totalling $7,400. (R. 1116a-1117a.)

In July, 1939, Goldberg advised the Bureau of Internal Revenue that the taxpayer was not in a financial position to pay the expenses of a trip to Washington by his representatives. In the same month, Goldberg sent another letter in which he advised that the taxpayer would be unable to proceed with a case pending before the Tax Court, involving deficiences for 1934 and 1935, because his financial condition was such that he was unable to pay any tax, or the costs of a trial. In April, 1940, Goldberg wrote a letter to the internal revenue collector in which deferment of two monthly installments of $300 each was requested, in order to enable the taxpayer to meet postdated checks totalling $500. It was reported that taxpayer's business had been bad, and that the burden of meeting monthly payments of $800 would be too much. (R. 1117a-1118a.)

In April, 1941, Goldberg sent a letter to the collector of internal revenue enclosing an offer in compromise. No remittance or financial statement accompanied the

offer; it was returned by the collector. The offer provided for payment of $2,500 in compromise of unpaid deficiences for 1934 and 1935, and for the 1937 tax returned. The offer, based on inability to pay, stated that the taxpayer had paid such large income taxes in the past several years that he was unable to meet his obligation without either borrowing the full amount or depleting his working capital to the danger point. In May, 1941, the taxpayer wrote to the collector, enclosing a check for $50 on account of income taxes for past years. The letter expressed regret that circumstances did not permit the taxpayer to send more at that time. (R. 1118a.)

Between May 20, 1935, and January 1, 1945, thirteen warrants were issued for the collection of the taxpayer's delinquent taxes. In July, 1939, the taxpayer told the deputy collector that he could not pay the sum of $4,500 then due. In September, 1939, the taxpayer arranged for consecutive monthly payments of $300. He made numerous defaults in these payments in 1939 and 1940. He made no payments after September, 1940, despite repeated contacts by the deputy collector. In November, 1942, the taxpayer submitted a check for approximately $5,500 in full settlement of the balance owing. During the period 1938 to 1941, inclusive, the collector made repeated efforts to locate assets out of which collections could be made, but without avail. (R. 1118a-1119a.)

Evidence as to the taxpayer's net worth increases during the taxable period; the net worth computation. The Tax Court found that the agents had made an extensive investigation of all available sources for the purpose of building up a net worth statement. Included in the net worth computation for the taxable period were assets, held in the names of the members of the

Lias Group, in seven corporations (Automatic Cigarette Sales Company, Greiner's, Inc., Laconia, Inc., Reuther's, Inc., Wheeling Downs, Inc., Wheeling Downs Racing Association, Zeller's Steak House, Inc.), and in four partnerships (Acorn Club, Market Street Club, Pirate Cafe, Point Pleasant Amusement Company). In addition, the net worth computation reflected the following assets in the names of the members of the group: cash in banks, Series "E" savings bonds, Treasury bonds, stocks, accounts receivable and payable, deeds of trust, and interests in realty. These assets had been discovered by searching public records, canvassing banks, examining the books and records of the various enterprises involved, and in many other ways. (R. 1121a-1122a, 1143a-1144a.)

The Tax Court found that when the agents asked the taxpayer about assets, they were repeatedly informed that the assets held in the names of members of the Lias Group were the property of the taxpayer, to do with as he saw fit.[7] Similarly, the Court of Appeals observed that the agents "were unable to find property in any considerable amounts belonging to members of the family" and that the taxpayer "was undoubtedly the owner, backer and operator" of the various partnerships and corporations which were engaged in gambling enterprises of some sort. (R. 1121a-1122a; Pet. 35.)

The Tax Court found that the following Schedule A, the facts and figures of which it found to be correct, set forth in composite form the total assets for the taxa-

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[7] As we discuss more fully below, (see pp. 34-36 *infra*) the basic fallacy in the taxpayer's position in this Court is the assumption that assets included in the net worth analysis for the taxable years constituted, to any substantial extent, property belonging, not to taxpayer, but to the several members of the Lias Group.

ble period which were held in the names of the members of Lias Group, and that the following Schedule B, the facts and figures of which it also found to be correct, sets forth the additions and deductions necessary to project the so-called consolidated net income of the family group, from which was deducted the net income, as reported or adjusted, of John Lias, Alice B. Lias, Gregory Manos and William Manos,[8] in order to determine the taxpayer's corrected net income (R. 1142a-1144½a):

[8] As we further note below, (see p. 36, *infra*) the deduction, for the taxable years involved, of the reported, or adjusted, net income of these members of the Lias Group from the so-called consolidated net income of the family group (in reality the net income of the taxpayer alone) was entirely consistent with the Government's theory of the case, to the extent that the other members of the group actually reported the taxpayer's net income. To the extent their returns reflected their own income, the deduction from the so-called consolidated net income of the family group obviously was a gratuitous credit to the taxpayer.

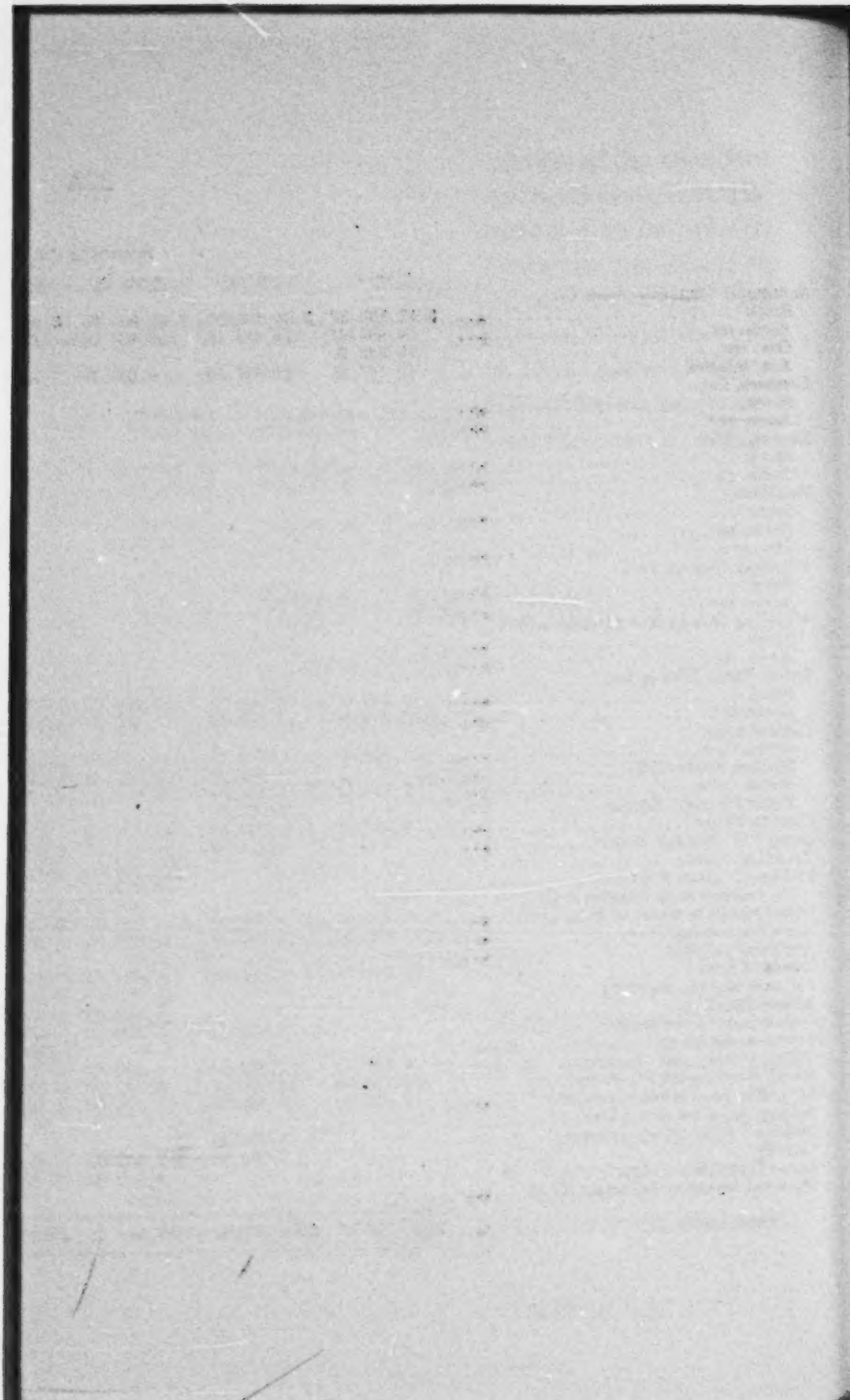
(Here follows 1 Paster, Schedule "A")

SCHEDULE "A"

	12/31/41	12/31/42	12/31/43	12/31/44
Automatic Cigarette Sales Co.				
Stock	$ 82,900.00	$ 82,900.00	$ 82,900.00	$ 82,900.00
Accts. rec.	(8,666.07)	(34,165.45)	(26,567.01)	(57,137.7
Div. rec.	16,580.00	—	—	—
Acc. salaries	19,197.50	20,447.50	8,286.76	10,786.4
Greiners, Inc.				
Stock	—	—	—	—
Accts. rec.	—	—	—	—
Laconia, Inc.				
Stock	—	—	—	—
Accts. rec.	—	—	—	—
Reuthers				
Stock	—	—	—	—
Accts. rec.	—	—	—	—
Div. rec.	—	—	—	—
Wheeling Downs, Inc.				
Stock	—	—	—	—
Accts. rec.	—	—	—	—
Wheeling Downs Racing Association				
Stock	—	—	—	—
Accts. rec.	—	—	—	—
Zellers Steak House, Inc.				
Stock	30,000.00	30,000.00	30,100.00	30,100.0
Accts. rec.	(30,868.06)	15,280.80	550.05	(11,917.6
Partnerships:				
Acorn Club	505.09	738.32	1,313.10	3,140.1
Market Street Club	—	18,613.15	58,960.15	50,009.6
Pirate Cafe	7,118.23	6,104.70	10,602.86	7,389.9
Point Pleasant Amuse.	—	5,000.00	—	—
Cash in banks	2,847.53	51,743.35	41,251.56	173,585.6
Series "E" Savings Bonds	—	14,925.00	26,193.75	60,318.7
Treasury Bonds	—	—	74,000.00	149,000.0
Stocks—Masten & Co.	—	—	88,012.13	—
Cr. balance with Masten & Co.	—	—	1,999.75	(200.0
Other stocks in name of John Lias	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.0
Accounts receivable	12,500.00	12,500.00	12,500.00	12,500.0
Accounts payable	—	—	—	—
Deeds of trust	(3,383.78)	(5,906.59)	(10,604.45)	(9,023.3
Aul and Shively Building	—	—	14,625.00	16,562.5
Musee Building	—	—	9,650.00	9,183.3
Community Apartments	—	32,430.00	31,590.00	35,232.3
Firestone Building	—	—	—	199,444.4
Filling station and equipment	8,397.53	7,492.08	6,586.63	5,678.1
90-92 Washington Street property	19,180.00	18,760.00	18,340.00	17,920.0
54½ Warwood Avenue property	3,425.00	3,100.00	2,775.00	2,450.0
Adding machine (John Lias)	—	—	—	—
20th and Main Street property	—	8,000.00	—	—
Garage	—	7,000.00	7,000.00	7,000.0
Lot—Tridelphia District	—	—	2,100.00	2,100.0
Personal residence—Detroit, Mich.	—	—	—	—
Total assets	$164,732.97	$299,962.86	$497,075.28	$802,022.7

SCHEDULE "A"

12/31/42	12/31/43	12/31/44	12/31/45	12/31/46	12/31/47	12/31/48
$ 82,900.00	$ 82,900.00	$ 82,900.00	$ 82,900.00	$ 82,900.00	$ 82,900.00	$ 82,900.00
(34,165.45)	(26,567.01)	(57,137.74)	(31,955.59)	28,625.91	66,637.31	71,675.82
—	—	—	—	—	—	—
20,447.50	8,286.76	10,786.76	7,500.00	—	—	—
—	—	—	15,000.00	15,000.00	15,000.00	—
—	—	—	(15,000.00)	5,000.00	5,000.00	—
—	—	—	235,194.98	621,894.98	621,894.98	621,894.98
—	—	—	69,679.34	10,790.00	44,910.00	(9,000.00)
—	—	—	9,000.00	9,000.00	9,000.00	9,000.00
—	—	—	(4,000.00)	—	—	—
—	—	—	—	—	2,000.00	—
—	—	—	—	265,000.00	265,000.00	365,000.00
—	—	—	167,500.00	14,982.13	584,955.46	419,985.66
—	—	—	—	—	25,000.00	25,000.00
—	—	—	—	(12,784.23)	(12,784.23)	(600.00)
30,000.00	30,100.00	30,100.00	50,100.00	50,100.00	50,100.00	50,100.00
15,280.80	550.05	(11,917.05)	(30,130.33)	(44,601.85)	(29,446.49)	(22,871.01)
738.32	1,313.10	3,140.15	4,433.60	7,120.93	10,081.69	11,488.82
18,613.15	58,960.15	50,009.65	49,273.53	3,029.80	10,499.13	3,372.42
6,104.70	10,602.86	7,389.62	2,036.85	2,300.62	1,977.72	1,144.09
5,000.00	—	—	—	—	—	—
51,743.35	41,251.56	173,585.62	350,987.11	80,644.12	8,241.14	7,719.74
14,925.00	26,193.75	60,318.75	60,318.75	150.00	150.00	150.00
—	74,000.00	149,000.00	224,000.00	224,000.00	—	—
—	88,012.13	—	—	—	—	—
—	1,999.75	(200.00)	—	—	—	—
$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00
12,500.00	12,500.00	12,500.00	12,500.00	14,750.00	12,750.00	12,750.00
—	—	—	(25,000.00)	(26,250.00)	(143,000.00)	(75,000.00)
(5,906.59)	(10,694.45)	(9,023.82)	(8,334.49)	—	—	—
—	14,625.00	16,562.50	23,295.44	—	—	—
—	9,650.00	9,183.33	8,716.66	—	—	—
32,430.00	31,590.00	35,232.37	—	—	—	—
—	—	199,444.46	—	—	—	—
7,492.08	6,586.63	5,678.18	4,772.73	—	—	—
18,760.00	18,340.00	17,920.00	17,500.00	—	—	—
3,100.00	2,775.00	2,450.00	2,125.00	1,800.00	1,475.00	1,150.00
—	—	—	84.41	75.37	—	—
8,000.00	—	—	—	—	—	—
7,000.00	7,000.00	7,000.00	7,000.00	—	—	—
—	2,100.00	2,100.00	2,100.00	2,100.00	—	—
—	—	—	46,000.00	46,000.00	46,000.00	46,000.00
$299,962.86	$497,075.28	$802,022.78	$1,342,597.99	$1,406,627.78	$1,683,341.71	$1,626,860.52



SCHEDULE "B"

	1942	1943	1944	1945	1946	1947	1948
Increase in net worth	$135,229.89	$197,112.42	$304,947.50	$540,575.21	$ 64,029.79	$276,713.93	($ 56,481.19)
Add: Federal income and gift taxes paid	23,366.08	112,808.35	109,480.65	94,986.21	184,723.82	119,047.89	110,351.65
Insurance premiums paid	2,288.82	11,903.67	1,031.88	41,088.35	74.31	—	—
Nondeductible portions of capital loss	—	—	—	—	—	—	7,135.43
Other personal items	41,885.66	58,566.06	86,192.50	109,381.47	91,996.73	32,348.74	21,305.51
	202,770.45	380,390.50	501,652.53	786,031.24	340,824.65	428,110.56	82,311.40
Less: Nontaxable portion of capital gain	—	(1,300.00)	(2,348.75)	(1,060.91)	(1,761.55)	(2,881.48)	—
Corrected consolidated net income	202,770.45	379,090.50	499,303.78	784,970.33	339,063.10	425,229.08	82,311.40
Less: Net income reported or adjusted							
John Lias	36,678.10	72,009.18	70,449.44	77,937.07	104,996.96	66,955.74	11,467.17
Alice B. Lias	(581.85)	13,392.17	8,475.14	13,472.87	1,763.75	3,252.96	Joint return
Gregory Koutroumanos	11,299.48	12,632.00	—	30,567.60	46,831.92	31,034.77	17,413.19
William Koutroumanos	14,479.06	14,422.00	—	—	—	—	12,550.44
Total net income reported or adjusted	61,874.79	112,455.35	78,924.58	121,977.54	153,592.63	101,243.47	41,430.80
Corrected net income of William G. Lias	140,895.66	266,635.15	420,379.20	662,992.79	185,470.47	323,985.61	40,880.60
Less: Net income reported by William G. Lias	98,283.74	81,023.26	86,109.59	76,336.18	135,429.68	127,773.13	(17,928.71)
Unreported income	$ 42,611.92	$185,611.89	$334,269.61	$586,656.61	$ 50,040.79	$196,212.48	$ 58,809.31

Proof that the assets of the Lias Group, used in the net worth computation, constituted the assets of the taxpayer, so that the so-called consolidated net worth of the Lias Group was in substance the taxpayer's net worth. As noted above, the Tax Court found that the taxpayer had repeatedly informed agents of the revenue service that the assets in the names of members of the Lias Group were his property, to do with as he saw fit. The Tax Court also found that record ownership of stocks, bonds, bank accounts, and brokerage accounts was no indication of true ownership; that segregation of the assets of each member of the Lias Group was an impossibility; that there was no record as to how much belonged to each member of the family; that assets were shifted from one name to another from year to year; and that money was intermingled and not earmarked. The Tax Court concluded that the taxpayer had "so conducted his own affairs and those of the 'Lias Group' as to make it impossible to identify the individual ownership of assets," and that "as a fact * * * the bank accounts, certain real estate, and the stock from which the income in question arises, belonged to petitioner."[9] (R. 916a-917a, 1149a, 1160a; Supp. R. 616, 649, 744; Pet. 33-34, 35-36, 38.)

In this context, the Tax Court made the following additional findings of fact:

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[9] The Court of Appeals—observing that the Tax Court had found "that petitioner owned the assets involved," that the Tax Court had not believed the taxpayer's "shifting of the burden to the other members of his family," and that "the Commissioner produced much proof, and the findings and opinion of the Tax Court are replete with facts indicating that petitioner and his operations were the source of the income"—concluded that "[u]pon this state of the record we cannot say that the conclusions of the Tax Court as to the true owners of this income are clearly erroneous." (Pet. 38-39.)

1. The taxpayer took the funds of the Wheeling Book Company, a partnership in which he and his brother, John Lias, were partners, to set up the Automatic Cigarette Sales Company, in which no interest appeared for them. He used funds of the latter corporation to set up Zeller's Steak House, Inc., the Market Street Club, the Pirate Cafe, the Point Pleasant Amusement Company (with interests to outsiders), and the Globe Amusement Company, with no interest in John Lias. (R. 1141a.)

2. Various bank accounts were opened in the names of John Lias, Mary Manos, and Alice B. Lias, with a total opening balance of $2,847.53 on January 1, 1942. The taxpayer referred to the money deposited in those accounts as "Lias money," "John's money," "family money," and "group money." (R. 1125a.)

3. In 1942, the taxpayer purchased the Community Apartments in his wife's name for cash, at a cost of $32,430. In 1945, the property was transferred to Laconia, Inc., for 350 shares of its capital stock. In 1947, the taxpayer filed a gift tax return covering the transfer of the property to his wife in 1942. The balance of the bank account in which rents on the property were deposited was transferred to the taxpayer's account in the same bank. (R. 1127a.)

4. On March 15, 1943, the taxpayer purchased the Aul and Musee Buildings in the name of his mother-in-law at a cost of $25,000, executing a purchase money mortgage for $10,000. Improvements to the property were made at a cost of $2,500 in 1944, $7,357.94 in 1945, and $4,580.55 in 1946. Income and losses from the buildings were included in the taxpayer's income in the deficiency notice covering the years 1943 to 1946, in-

clusive. The taxpayer's mother-in-law had no property; her sons claimed her as a dependent in 1937, and for the period 1939 to 1942, inclusive. The Aul and Musee Buildings were transferred to Laconia, Inc., for 320 shares of its capital stock, valued at $32,000, issued in the name of the taxpayer's mother-in-law, and transferred in 1946 for the benefit of the taxpayer's two children. (R. 1129a.)

5. In 1942, 1943, and 1944, the taxpayer purchased United States Series E Bonds, costing $60,168.75, in his wife's name. However, he reported the interest on these bonds as his own income. He sold the bonds in 1946, and purchased the Laconia Building with the proceeds. (R. 1127a.)

6. In 1943 the taxpayer purchased securities in a brokerage account with Masten & Company. The account stood in his wife's name at one time, and his wife's and mother-in-law's names at another. His mother-in-law owned no interest in the account. The taxpayer reported all dividends, except those on three securities, as his own income, (R. 1128a-1129a.)

7. In October, 1944, the taxpayer purchased the Firestone Building for cash, at a cost of $200,000, and he placed title in the name of his wife.[10] In 1945, the property was transferred to Laconia, Inc., for 2,000 shares of stock which were spit equally between the taxpayer and his wife. (R. 1129a.)

8. In September, 1945, a joint bank account standing in the names of the taxpayer and his brother was closed out by transferring $51,316.08 to a savings account in the names of the taxpayer and his wife, and by with-

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[10] He filed a belated gift tax return in 1947, covering the transfer to his wife. (R. 1129a.)

drawing $49,000 which the taxpayer used to help buy the Firestone Building in Pittsburgh. (R. 1122a.)

9. In 1945, stock of Laconia, Inc., having a cost of $235,194.98 (including the stock issued for the Community and Firestone Buildings), was issued to the taxpayer and his wife. In 1945, the taxpayer advanced $69,679.34 to Laconia, Inc., on open account. In 1946, stock of that corporation, charged against total cash of $104,700 advanced by the taxpayer, was issued in varying proportions to the following: the taxpayer; his brother; his wife; his brother-in-law, George W. Lias; and his child, Antoinette Lias. The taxpayer filed a gift tax return in 1947, reporting the stock issued to the others as gifts. Of the amounts which the taxpayer advanced to Laconia, Inc., $30,000 came from bank accounts in the names of his wife and children, the interest on which the taxpayer has reported as his own income in his returns for 1946, 1947 and 1948. (R. 1130a.)

10. In December, 1946, during the investigation made by the revenue agents, the stock of Automatic Cigarette Sales Company and of other corporations was transferred for the ostensible purpose of conforming record ownership with true ownership. In November, 1948, the stock was reshifted, with the taxpayer as a minority stockholder. The transaction which effected the reshifting was a sham. (R. 172a, 1025a-1036a, 1145a, 1148a-1149a, 1160a-1161a; Supp. R. 429, 1164-1165, 1169, 1173, 1176-1177.)

11. Dividends of stock of Reuther's, Inc., held in the name of one Samuels, were paid to the taxpayer and were reported by him in his returns for 1946 and 1948. (R. 1123a.)

12. Dividends of Automatic Cigarette Sales Company were paid to the taxpayer's mother-in-law, although the stock was held in the name of his wife, and were paid to stockholders previously of record after their shares had been transferred. (R. 1122a-1123a.)

Additional evidence tending to support the findings below may be summarized as follows: With respect to the taxpayer's claim that his brother, John Lias, had entrusted him with substantial sums, variously stated as $100,000, $115,000, $118,000, and $200,000 (constituting an alleged liability to be taken into consideration in the net worth computation), the taxpayer had told a special agent, in 1947, that whenever he used his brother's money he later made an accounting with him. However, he admitted that he had kept no records of any accounting. John Lias did not testify. Overmeier, the taxpayer's accountant, admitted that he had found no record that John Lias had invested any money. Goldberg admitted that he had no evidence of John Lias' contributions, except oral statements of both the taxpayer and his brother. As to the taxpayer's claim that he had given his brother a note to cover the alleged advances, Goldberg testified that he never inquired as to the location of the note, and the taxpayer informed his secretary that he had destroyed it. John Lias allegedly brought his sum of money, exceeding $100,000, to Wheeling, in 1931. The total income which he had reported for the entire period 1924 to 1931, inclusive, was $9,471.70. In 1932, his reported income was $2,600, and in 1933, it was $3,500. (R. 229a, 452a-454a, 534a, 599a-601a, 750a, 1156a, 1157a; Supp. R. 186, 204, 575, 624, 658.)

Gregory Manos was the only member of the Lias Group, other than the taxpayer, who testified below.

Among other things, he stated that neither he nor his brother, William Manos, put any cash into either the Automatic Cigarette Sales Company or the Market Street Club; that he drew a salary of $100 a week; that he endorsed over to the taxpayer his dividends and bonuses from both of those companies (including $30,000 received from the Market Street club in 1945, and $48,000 received in 1946); that he kept no notes or memoranda concerning moneys turned over to the taxpayer; and that he took no interest in what the taxpayer would do with the money As to the so-called family agreement of November 1, 1948, which purported to be an accounting between the taxpayer, John Lias, Gregory Manos, and William Manos, Gregory Manos testified that he accepted it without question or inquiry; that he knew nothing of the employment of accountants to draft it; and that he had never examined the schedules which recited that he owned large interests in the Automatic Cigarette Sales Company. He admitted that minutes of that corporation, reciting that he had turned slot machines over to it for original stock, were false; that in fact he never owned $3,000 worth of slot machines, as recited in the minutes, and had made no such proposal; and that he never had $7,000 in cash to put into the business, as the minutes recited. He could not explain why the certificates were issued to him and could not remember putting any cash in the business. (R. 363a, 494a-525a; Supp. R. 224-317.)

The Tax Court concluded that the November 1, 1948, agreement was "a sham and without substance," and that the attempted transfers shown therein "were without consideration and * * * without validity." In this connection, the Tax Court found that there were no rec-

ords to show that the amounts listed on the schedules attached to the agreement were left in the Lias enterprises; that in listing those amounts, the taxpayer's accountant had relied upon oral statements of the taxpayer and his brother, John Lias, that all moneys reported as income were left with the taxpayer for investment; that there were no personal books of the taxpayer or of the other members of the family group to establish the interfamily financial relationships; and that the only available records were some check stubs and cancelled checks. (R. 1160a-1161a.)

Indicia of fraud. The Tax Court found that during the taxable period, the taxpayer received income from illegal gambling and slot machine activities. He did not record his numerous transactions in permanent personal books of accounts or records, and maintained no records adequate to enable the Commissioner to determine his correct income. When questioned as to an item of $35,000 which appeared as slot machine receipts on his 1942 return, he gave several conflicting explanations. He used large amounts of cash in many transactions throughout the taxable years, involving listed stocks, real estate, United States bonds, bank accounts, and the income therefrom. Even when checks were received, they were cashed and not deposited. He refused to supply the revenue agents with a net worth statement, and refused to make any statement as to the amount of cash on hand as of January 1, 1942. He admitted that assets which constituted his property, to do with as he saw fit, were kept in the names of the other members of the Lias Group, and the Tax Court concluded that the taxpayer, "deliberately and with purposeful design," so conducted his own affairs and

those of the Lias Group as to make it impossible to identify the individual ownership of assets. As to the November 1, 1948, agreement which purported to establish the ownership of certain stock in other members of the Lias Group, as noted above, the Tax Court concluded that it was "a sham and without substance," and that the attempted transfers therein were "without consideration * * * and without validity." (R. 1105a-1106a, 1120a, 1121a-1122a, 1145a, 1146a, 1148a, 1149a-1150a, 1151a-1152a, 1161a.)

The Tax Court further found that there had been a "repeated understatement of income in each of the taxable years by percentages ranging from a minimum of 137 per cent in 1946 to a maximum of 488 per cent in 1944.[11] The Court of Appeals agreed that the "amounts of net income found by the Tax Court to have been omitted from the petitioner's tax returns, and the circumstances under which the omissions are shown to have occurred, are amply sufficient to support the fraud penalties." (R. 1144½a, 1163a; Pet. 39.)

ARGUMENT

1. The court below, affirming the Tax Court, held that the Commissioner properly had employed the net worth method in determining income tax deficiencies and penalties of more than two million dollars against the taxpayer for the years 1942 through 1948.[12] The decision is correct, applying principles of law, relevant

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[11] These percentages reflect a credit to the taxpayer for the total income of $671,499.16 reported by other members of the Lias Group during the same period. (R. 1144½a.)

[12] A joint return having been filed for 1948, the deficiencies and penalties involved for that year were assessed against both the taxpayer and his wife.

to cases of this type, which this Court first enunciated in *United States* v. *Johnson*, 319 U.S. 503, and more recently in *Holland* v. *United States*, 348 U.S. 121, and related cases.[13] The taxpayer in this case was a slot machines, race track and realty operator. Primarily, however, he was—as was the taxpayer in *Johnson*, 319 U.S. at pp. 515, 517,—"a gambler on a magnificent scale," and the fact that his "gambling transactions were on an enormous scale was overwhelmingly established". In the circumstances, it was, of course "not to be expected that the actual financial transactions of such a vast illicit business would appear by direct proof," (319 U.S. at 517) and, since the taxpayer kept no personal books and records from which his true income could be determined,[14] resort to the net worth method was of course permissible, if not required (*United States* v. *Johnson*, 319 U.S. at 517; *Holland* v. *United States*, 348 U.S. at 124, 130-132).

Both the Tax Court and the Court of Appeals in effect agreed that the evidence in this case fully met the tests which this Court prescribed in *Holland* and related cases in order to insure proper use of the indirect method of determining correct income.[15] For example:

(1) *Opening net worth was definitely established.* The Tax Court found that there had been (R. 1121a) "an

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[13] *Friedberg* v. *United States*, 348 U. S. 142; *United States* v. *Calderon*, 348 U. S. 160; *Smith* v. *United States*, 348 U. S. 147.

[14] Both courts below agreed as to this. (R. 1146a; Pet. 33.)

[15] Those tests were prescribed in the context of criminal tax cases. Although they may be applicable to civil tax cases as well, obviously the quantum of proof by which the Government must sustain deficiencies and penalties in a civil tax case involving fraud is less than its burden in a criminal case. *Helvering* v. *Mitchell*, 303 U. S. 391, 397; *Holland* v. *United States*, *supra*, p. 126.

extensive investigation from all available sources," and, with respect to the taxpayer's claim of a substantial amount of cash on hand at the starting point (R. 1152a), "the record discloses a great deal of credible evidence which negates the existence of any secreted currency as ot January 1, 1942." The Court of Appeals concurred, concluding that the taxpayer had (Pet. 37) "offered no evidence whatsoever to support a claim of * * * savings or cash" of between $850,000 and $950,000, including about $700,000 in cash, but that, on the contrary, he had "conclusively established to the Commissioner of Internal Revenue, when his returns for the years up to 1941 were under consideration, that he had no funds whatsoever."

(2) *The Government did not fail to investigate all possible leads as to the taxpayer's assets on hand at the starting point.* As the Court of Appeals concluded, the agents had conducted (Pet. 37) "an exhaustive and meticulous search," the taxpayer himself had "offered no evidence persuasive" in the matter, and "none of his family except one took the witness stand." That one, the taxpayer's nephew, Gregory Manos, offered no relevant leads to the detection of any additional assets at the starting point. (R. 494a-525a; Supp. R. 224-317.)

(3) *Nontaxable sources of the alleged net worth increases were negatived.* The Tax Court found that during the taxable years in question the taxpayer (R. 1142a) "did not receive any money or property either by gift or inheritance." As to amounts which the taxpayer allegedly borrowed from his brother, John Lias, under the guise of a contribution, exceeding $100,000, to the family pool in 1931, the Tax Court on the basis of the taxpayer's testimony and of the income tax returns

filed by John Lias for years prior to 1931, found that (R. 1157a) on the "undisputed evidence, and the fact that John was not a witness in these proceedings, the petitioner's claim respecting the sum of $118,000 appears to the Court to be incredible." [16]

(4) *The assets included in the net worth computation were proved to be the assets of the taxpayer.* The Tax Court found that when the agents questioned the taxpayer as to specific assets which had been discovered (R. 1121a-1122a, 1148a), "he stated repeatedly that all assets, regardless of whether they were in the names of his wife, brother, mother-in-law, or brothers-in-law, were his to do with as he saw fit." The Tax Court further found that (R. 1160a, 1161a) "the bank accounts, certain real estate, and the stock from which the income in question arises, belonged to the petitioner." Significantly, it found that the agreement of November 1, 1948—a belated attempt, triggered by the investigation in the case, to establish majority ownership of the stock in others—was (R. 1161a) "without consideration" and "without validity." The Court of Appeals agreed (Pet. 38) "that petitioner owned the assets involved." Noting that the Tax Court "did not believe * * * [the

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[16] Even assuming, contrary to the government's position in *United States* v. *Ford*, 237 F. 2d 57, certorari granted February 25, 1957, No. 794, this Term, that proof of likely sources of additional income attributed to the taxpayer was essential, there was abundant proof of such sources. The Tax Court concluded that (R. 1147a): "Dating from his release from the penitentiary in 1933, and continuing through the taxable periods in question, the petitioner has maintained varying interests in partnerships and corporations, most of which derived their income from gambling activities embracing many forms." The Court of Appeals agreed that (Pet. 35): "The various partnerships and corporations were all engaged in gambling enterprises of some sort, and the petitioner was undoubtedly the owner, backer and operator of those enterprises."

taxpayer's] shifting of the burden to the other members of his family," that, on the other hand, "the Commissioner produced much proof, and the findings and opinion of the Tax Court are replete with facts indicating that petitioner and his operations were the source of the income," it affirmed those findings.[17]

The basic fallacy of the taxpayer's position in this Court, as below, is the erroneous assumption, underlying both points of his argument (Pet. 13-24), that the net worth computation used by the Commissioner reflects assets actually owned by members of the Lias Group other than the taxpayer, and the consequent, erroneous conclusion that what both courts below described as a consolidated family net worth—merely as a matter of descriptive convenience—was, in a literal sense, the composite net worth of the individual members of the Lias Group. This fundamental error underlies the taxpayer's contentions that use of the net worth method here required that the net worth computation reflect the opening assets of the various members of the Lias Group other than the taxpayer, and that, to the extent that it did not do so, there was a failure of proof as to fraud. The answer to these contentions is twofold: (1) Assuming, *arguendo,* that the taxpayer's theoretical position is correct, his conclusions nevertheless ignore the Tax Court's findings that the agents had (R. 1121a) "made an extensive investigation from *all* available sources for the purpose of building up a net worth statement" (emphasis supplied) and that, more specifically (R. 1155a)—

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[17] The settled rule of this Court makes the concurrent findings below final, in the absence of exceptional error. *Comstock* v. *Group of Investors,* 335 U.S. 211, 214.

A search of the record does not disclose any testimony as to cash on hand at the opening of the taxable period belonging to members of the family other than the cash reserve claimed by William G. Lias. Petitioner testified that he was the only one of the family unit who handled the money. If the other members had cash at the beginning of the taxable period they still had it at the close of the period. Outside of the petitioner, the only member of the Lias family to testify in these proceedings was Gregory Manos, who did not testify that he had any cash on hand on January 1, 1942.

(2) More pointedly, however, the taxpayer had admitted that all assets held in the names of other members of his family group were his. (Pet. 33-34.) Both courts below agreed that the taxpayer had (Pet. 34) "so conducted his own affairs and those of the 'Lias Group' as to make it *impossible* to identify the individual ownership of assets" (emphasis supplied), and the Tax Court was (R. 1149a-1150a) "not persuaded that the petitioner did not create this confused situation deliberately and with purposeful design." In these circumstances, it was entirely appropriate to include all assets of the Lias Group in the net worth construction. Clearly, such action did not result in a consolidated family net worth in the sense that it reflected assets actually owned by the members of the Lias Group other than the taxpayer. In substance, as well as in intention, the resultant net worth was the taxpayer's alone. On this hypothesis, the Commissioner's act of offsetting the income reported during the taxable period by the other members of the Lias Group against the total net worth increases attributed in sub-

stance to the taxpayer is revealed as nothing more than a gratuitous benefit to the taxpayer, who should not be permitted to construe that act, out of context, as a means of transmuting the essence of the net worth computation.

2. The decision below is not, as the taxpayer contends (Pet. 24-27), in conflict with the decisions of other Courts of Appeals on the question of the proof required to establish fraud. The proof of fraud in this case does not depend upon the persistent understatement of income alone, substantial though it was. Here, there was not only "evidence of a consistent pattern of under reporting large amounts of income" (*Holland* v. *United States,* 348 U.S. at 139), but also of acts constituting "conduct, the likely effect of which would be to mislead or to conceal" (*Spies* v. *United States,* 317 U.S. 492, 499). For example, among other things, the taxpayer did not keep any personal books or records, inordinately used large amounts of cash, concealed assets and covered up sources of income, gave conflicting statements as to specific items in his returns, and caused a sham agreement to be entered into, falsifying the interests of members of his family group in various corporate enterprises. These were not "circumstances which at most create only suspicion" (*Goldberg* v. *Commissioner* (C.A. 5th), decided December 19, 1956 (1957 C.C.H., par. 9261)); on the contrary, they constituted "additional independent evidence from which fraudulent intent on the part of the taxpayer can properly be inferred" (*Kashat* v. *Commissioner,* 229 F. 2d 282, 285 (C.A. 6th)).

CONCLUSION

The decision of the court below is correct, there are no conflicting decisions, and further review is not warranted. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APRIL 1957.

APPENDIX

Internal Revenue Code of 1939:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

* * * * *

(26 U.S.C. 1952 ed., Sec. 22.)

SEC. 41. GENERAL RULE.

The net income shall be computed upon the basis of the taxpayer's annual accounting period(fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

(26 U.S.C. 1952 ed., Sec. 41.)

SEC. 51. INDIVIDUAL RETURNS.

* * * * *

(b) [As amended by Sec. 303, Revenue Act of 1948, c. 168, 62 Stat. 110] *Husband and Wife.*—

(1) *In general.*—A husband and wife may make a single return jointly. Such a return may be made even though one of the spouses has neither gross income nor deductions. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

* * * * *

(26 U.S.C. 1952 ed., Sec. 51.)

SEC. 54. RECORDS AND SPECIAL RETURNS.

(a) *By Taxpayer.*—Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) *To Determine Liability to Tax*—Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such a person is liable to tax under this chapter.

* * * * *

(26 U.S.C. 1952 ed., Sec. 54.)

SEC. 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276—

(a) *General Rule.*—The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * *

(26 U.S.C. 1952 ed., Sec. 275.)

SEC. 276. SAME—EXCEPTIONS.

(a) *False Return or No Return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

* * * * *

(26 U.S.C. 1952 ed., Sec. 276.)

SEC. 293. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY

* * * * *

(b) *Fraud.*—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2).

(26 U.S.C. 1952 ed., Sec. 293.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

Sec. 29.54-1. *Records and Income Tax Forms.*—Every person subject to the tax, * * * shall, for the purpose of enabling the Commissioner to determine the correct amount of income subject to the tax, keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of the gross income and the deductions, credits, and other matters required to be shown in any return under chapter 1. * * *

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